

**IN THE COURT OF APPEALS OF IOWA**

No. 0-546 / 09-1289  
Filed October 20, 2010

**IN THE MATTER OF THE ESTATE OF  
RUBY M. MILLER, Deceased,**

**TIMOTHY J. MILLER,**  
Appellant.

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Appeal from the Iowa District Court for Fayette County, John  
Bauercamper, Judge.

Timothy Miller appeals from the district court order resolving final matters  
before closing an estate. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

W. Saur and John W. Hofmeyer III, Oelwein, for appellee.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

**TABOR, J.**

More than a decade after his mother's will was admitted to probate, Timothy (Tim) Miller appeals from the district court's April 8, 2009 resolution of two issues remaining before the executor can prepare and file the final report to close the estate. Tim contends the district court erred in requiring him to pay his debts to the estate from his inherited homestead assets and in determining the dates on which Tim occupied other property belonging to the estate. Because the district court correctly determined that the first issue was already decided adversely to Tim and accurately calculated Tim's rental obligations for the second issue, we affirm.

***I. Background Facts and Proceedings.***

Between them, Virgil and Ruby Miller had four sons. Tim was the youngest and the only child they had in common. Virgil died in 1996 and Ruby died two years later in February 1998. In her will, Ruby bequeathed her home in Oelwein to Tim and appointed him as executor of her estate. She divided the remainder of her estate in equal shares among all four children. Virgil's sons, Richard Dean Miller and Earl William Miller, have been involved in the litigation surrounding this estate.

Tim was removed as executor in November 2000 following claims he failed to act competently, timely, and impartially to marshal the estate's assets. Around this time, Tim sold the Oelwein home for \$58,500. By agreement, the proceeds of the sale were held in escrow as a result of claims regarding Tim's administration of the estate.

The court found Tim wrongfully took \$15,000 in cash from his mother following Virgil's death but before her death, and ordered him to repay the estate in this amount. The court also ordered Tim to pay rent in the amount of \$350 per month for real estate located in Otterville that he occupied following Ruby's death. In the event Tim was to vacate part of the real estate, he was to renegotiate the rental rate directly with the executor.

In December 2001, the court ordered funds from the escrow of the Oelwein home to be paid to the estate in the amount of \$15,050 for back rent through the date of September 21, 2001; \$11,299.97 for expenses; and \$15,000 plus interest charged as of December 30, 1996, for the money he wrongfully took from Ruby following Virgil's death.

In 2009, the court held a hearing on all remaining issues to be resolved in the estate following years of litigation and delays. Pursuant to a December 22, 2008 court order the parties were to identify the issues to be resolved at trial. The executor's statement listed the issues as "the sum owed by Timothy Miller to the estate for his continued occupancy of [the Otterville] property." In his statement of issues, Tim alleged, "Allowing claims to be asserted against the proceeds of his mother's homestead violates Iowa Code Section 561.19."

Following trial, the district court held:

The court finds that the executor has correctly calculated Tim's obligation to the estate to pay rent for the real estate used and occupied by him since the decedent's death.

The court finds that the court's prior ruling that Tim is indebted to his mother's estate for the \$15,000.00 taken after his father's death has already been resolved and *res judicata* prevents further litigation over this claim.

Tim appeals from this ruling.

## ***II. Scope and Standard of Review.***

Iowa Code section 633.33 (2007) states:

Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity.

Matters tried in equity are reviewed de novo. *In re Estate of Thomann*, 649 N.W.2d 1, 3 (Iowa 2002). The trial court's findings of fact are not binding on us. *Id.* Where the issue in dispute is one of statutory interpretation, our review of questions of statutory interpretation is for the correction of legal error and we are not bound by the trial court's legal conclusions. *Id.* at 4.

## ***III. Homestead Exemption.***

Tim first contends the court erred in finding the proceeds from the sale of the Oelwein home were not exempt from his debts pursuant to Iowa Code section 561.19. That section states in pertinent part: "Where the homestead descends to the issue of either spouse the homestead shall be held exempt from any antecedent debts of the issue's parents or antecedent debts of the issue . . . ." He argues debts incurred following the inheritance are also exempt.

Like the district court, we conclude this issue is not properly before us. In its December 3, 2001 order, the district court directed the proceeds of the sale of the home be used to reimburse the estate for back rent, expenses, and the \$15,000.00 Tim took from Ruby after Virgil's death. Tim received notice of and appeared at the hearings held in advance of this order and filed motions in

relation to the pending issues. The December 3rd ruling was a final order of the court pursuant to Iowa Code section 633.36 (2001), which states: “All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.” The purpose of section 633.36 is “to allow a prompt appeal from those orders and rulings on probate matters during the administration of the estate rather than at the time of the final report.” *In re Estate of Troester*, 331 N.W.2d 123, 126 (Iowa 1983). If an order is a final judgment under section 633.36, then an appeal must be taken within thirty days from the entry of the order. Iowa R. App. P. 6.5(1); *In re Estate of Myers*, 269 N.W.2d 127, 128 (Iowa 1978). Tim did not appeal from this order and, therefore, it became law of the case. See *State v. Steffens*, 282 N.W.2d 120, 121 (Iowa 1979).

Furthermore, in its June 3, 2002 order authorizing the money held in escrow to be paid to the estate, the district court noted, “The attorneys were all in agreement that the money now held in escrow . . . can be paid over into the Ruby Miller Estate . . . .” The attorneys referenced by the district court included Tim’s attorney Don Gottschalk. Tim cannot acquiesce to the use of the proceeds of the sale of the homestead and then complain eight years after the fact the court acted in conformity with his consent.

#### ***IV. Rent Calculation.***

Tim next contends the court erred in determining, for the purposes of calculating the amount of rent owed, the length of time he occupied the Otterville property. The court found the executor’s calculation to be correct. This

calculation charged rent for use of the premises until it was sold at auction in October 2005.

In its September 21, 2001 order, the district court requires Tim to pay \$350 per month in rent “continuing as long as he occupies all of the real estate on both sides of the road.” It further provides that Tim will renegotiate the rental rate directly with the executor in the event he should vacate part of the property. Tim testified he resided at the location until late 2002, but continued to store personal property there after he moved. Tim’s argument is that he did not occupy the property in question.

We conclude the district court did not err in finding Tim occupied the Otterville property until it was auctioned in 2005. Tim never gave notice he was vacating the property or attempted to renegotiate the rent for less than the full amount based on lessened occupancy. The onus was on Tim to do so as directed by the court in its September 21, 2001 order.

Furthermore, Tim’s actions evince his intent to continue to occupy the property. Tim left possessions on the property; in those cases in which there is a fixed rental period or the tenant has agreed to vacate the property, this conduct has sometimes been held to constitute a holdover tenancy, for which the tenant is liable for rent. See *Nathan Lane Assoc., L.L.P. v. Merchants Wholesale of Iowa, Inc.*, 698 N.W.2d 136, 138 (Iowa 2005). Furthermore, Tim placed locks on the house and the two garages on the property remained locked. He failed to remove his possessions from the property as directed by the executor of the estate and threatened litigation if the executor attempted to remove the

possessions. Under the facts before us, it is proper to assess Tim rent for his occupancy of the Otterville property until its sale in October 2005.

**AFFIRMED.**